

THE CHANCELLOR :

Since the order of the 10th of January last, the Auditor has made a further report, and stated sundry accounts to which exceptions have been filed by the parties, and the questions having been argued orally and in writing by the solicitors of the parties, are now, by agreement, submitted for decision.

The cause has been depending since October, 1846, and it is to be regretted that so much time has been consumed before the parties really entitled can receive the benefit of the fund intended for them. I am persuaded, however, when the circumstances connected with this case are considered, and the number and variety of the questions which have been raised and discussed are brought into view, that however much we may regret the delay, it will be quite apparent that the causes which have produced it are abundantly sufficient for the purpose.

Since the order of the 10th of January, a number of additional claims have been filed, and a portion of these having been allowed by the Auditor, the last argument has been directed chiefly to the question whether, as against the plaintiffs, who have plead the statute of limitations, these claims are barred?

According to the established rule of this court, adopted and approved of by the Court of Appeals, "the statute of limitations runs against a claim or debt down to the time it is exhibited." And as the claims in question are founded upon promissory notes, and more than three years have elapsed between their maturity and exhibition in this court, the bar, so far as the plaintiffs are concerned, would be complete, and they would, with respect to the plaintiffs, be excluded if there was nothing in the case to save them from the operation of the statute. *Hall vs. Creswell*, 12 G. & J., 48.

These creditors are here seeking payment of their claims out of the proceeds of mortgaged property pledged for their security, they being, according to the former opinion, subrogated in the place of those whose claims come within the terms of the mortgage, and it therefore appears to me that unless the de-